IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2437 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURAT PEOPLE'S CO.OP. BANK LTD

Versus

PRAVINKUMAR MAGANLAL PATEL

Appearance:

1. Special Civil Application No. 2437 of 1990

Ms. Megha Jani for MR MJ THAKORE for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/02/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is the Surat People's Co-operative Bank Ltd. (hereinafter referred to as the "Bank"). The Bank challenges the judgment and order dated 14th August, 1989 passed by the learned Gujarat Revenue Tribunal (hereinafter referred to as the "Tribunal") in Revision Application No. TEN/B.S./305/84. The facts leading to the present petition are as under:

The dispute pertains to the lands bearing survey No. 49/11 admeasuring 5 acres 15 gunthas of village Bhatbet, Taluka : Choryasi and survey No. 591 admeasuring 5 acres 31 gunthas of village Pal, Taluka : Choryasi, District : Surat. Admittedly, the said lands were diluvial lands belonging to the Bank. The said lands were reclaimed in the years 1971 and 1973 and were measured on 7th May, 1973. On 13th June, 1973, the Bank entered into an agreement with the respondent herein. Under the said agreement, the respondent agreed to get the said lands cultivated through hired labour on behalf of the Bank; to sell agricultural produce in the market committee; to account for expenditure made on wages, implements, seeds etc. and sale proceeds of the agricultural produce. In consideration thereof, the Bank agreed to remunerate the respondent by giving 1/3rd of the sale proceeds of the agricultural produce sold in the market committee after deducting the expenditure made on cultivation of the said lands. Since the date of the agreement, the respondent got the said lands cultivated through hired labour and was remunerated from the net profit of the sale proceeds of the agricultural produce. In the year 1977, the respondent instituted Tenancy Case No. 2347 of 1977 under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act") in the Court of the Mamlatdar and A.L.T., Choryasi Prant. The respondent claimed that he was cultivating the said lands and was being remunerated in crop share; the respondent was, therefore, a deemed tenant within the meaning of Section 4 of the Act. Said claim was contested by the Bank. The Bank denied that the respondent was the tenant of the Bank. In defence thereof, the Bank produced accounts and examined its Manager one Shri Jayantbhai Thakorbhai Jadav. The Bank maintained that the Bank used to cultivate the said lands personally through hired labourers; the respondent did not cultivate the said lands; the respondent merely supervised the agricultural operations carried out on the said lands. The Mamlatdar and A.L.T. Choryasi Prant, under his judgment and order dated 29th October, 1979, was pleased to hold that the respondent was not a tenant of the Bank and was not cultivating the said lands. Feeling aggrieved, the

respondent preferred Tenancy Appeal No. 1 of 1980 before the Assistant Collector, Choryasi Prant. Said appeal was dismissed on 28th July, 1980. Feeling aggrieved, the respondent preferred Revision Application No. TEN.B.S. 154 of 1980 before the Tribunal. The Tribunal was, under its judgment and order dated 18th August, 1982, pleased to partly allow the said Revision Application and to remand the appeal to the Assistant Collector, Choryasi Prant for hearing and decision afresh. After remand, the Assistant Collector, Choryasi Prant, under his judgment and order dated 6th March, 1984, allowed the said Appeal and held that the respondent was the tenant in the said lands. Feeling aggrieved, the Bank preferred Revision Application No. 305 of 1984 before the Tribunal which was dismissed on 14th August, 1989. Feeling aggrieved, the Bank has preferred present petition.

Ms. Jani has read out the agreement dated 13th June, 1973 and has submitted that under the said agreement, the parties did not intend to create a tenancy. The respondent had agreed to supervise the agricultural operations to be carried on on the said lands and to sell the produce thereof. By no stretch of imagination, the respondent can be said to have been inducted as a tenant in the said lands. She has further submitted that the said agreement was carried out in letter and spirit; that all the expenses of cultivation were incurred by the Bank. The respondent was remunerated out of sale proceeds received from the agricultural crops cultivated on the said lands; the respondent never cultivated the said lands personally but used to get the said lands cultivated through hired labour for which payment was being made by the Bank. The respondent, therefore, cannot be said to be the tenant. The Tribunal and the authority below have erred in holding that the respondent is the tenant since he is not a servant of the Bank. Approach of the tribunal and the authority below is erroneous and the impugned decision is required to be quashed and set aside. She has also relied upon the definition of the words 'to cultivate' and 'to cultivate personally as they appear in section 2(5) and 2(6) of the Act and section 4 of the Act.

Learned advocate Mr. Bhatt has appeared for the respondent and supported the order of the Tribunal as well as the authority below. He has also read out the counter affidavit made by the respondent. Mr. Bhatt has submitted that the respondent cannot be said to be the servant of the Bank and he, therefore, shall be considered to be deemed tenant as envisaged in section 4 of the Act. In support of his contention, he has relied

upon the judgment of the Hon'ble Supreme Court in the matter of Jagan alias Jagannath Umaji v. Gokuldas Hiralal Tewari [AIR 1987 SC 2429] and of Balu Laxman Khatik versus Biru Ramchandra Kotmire [(1999) 1 SCC 308]. He has also relied upon the judgment of this court in the matter of Thakor Kesaji Ranaji (Decd.) by His Heirs & LRs Thakor Lilaji Kesaji v. Vallabhdas Parshottamdas Parikh [1996 (3) GLR 849].

The plain reading of the agreement in question does not spell out the relationship of the land lord and the tenant between the Bank and the respondent. Under the said agreement, it was the Bank who had to bear expenses of cultivation i.e. the Bank had to pay for the wages of labourers; for the equipments that may be hired and for the expenses of seeds etc. The respondent had agreed to supervise agricultural operations and to sale agricultural produce in the market committee. The respondent had also agreed to submit receipts for the money spent to the bank. For the efforts made by the respondent, he had to be remunerated in cash equivalent to 1/3rd of the net profit of the sale of the agricultural produce of the said lands. Moreover, the said agreement specifically stipulates that all expenses should be incurred in the name of the Bank and the receipts should be issued in the name of the Bank. Every year, the name of the Bank should be entered in the "Pani Patrak." The said agreement, therefore, cannot be said to be a rent note or an agreement creating tenancy in favour of the respondent.

The question therefore should be whether, irrespective of the said agreement, the respondent can be said to be a deemed tenant within the meaning of section 4 of the Act. Section 4 of the Act reads as under:

"4. Persons to be deemed tenants.- A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not -

(a) a member of the owner's family, or
(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owners, family, or
(c) A mortgagee in possession. "

A Plain reading of the above section makes it

clear that a person claiming deemed tenancy under the said section shall not be the owner of the land in question and shall be in lawful possession of the land in question and shall be cultivating the same. The words 'to cultivate' have been defined in section 2(5) of the Act as under:

'2(5) "to cultivate" with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising of improving agricultural produce, whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression "uncultivated" shall be construed correspondingly

Hence, in my view, reading section 4 with section 2(5) of the Act, it is apparent that the person claiming deemed tenancy under section 4 of the Act shall be cultivating the lands personally by manual labour or by means of cattle or machinery and shall be carrying on agricultural operations thereof. The evidence on record reveals that the lands were being cultivated through hired labourers, wages of whom were borne by the Bank. The respondent has admitted in his evidence that he was getting the land cultivated through hired labourers i.e. the respondent did not cultivate the land personally either by manual labour or by means of cattle or machinery. Further, it is also admitted that the respondent did not pay rent to the Bank nor did he pay the land revenue for the said lands. All the expenses of cultivating the lands that is ploughing the lands, seeds and other agricultural operations were being borne by the Bank. This fact has been proved by the Bank by producing the accounts and the receipts for the payment made by it. It is also undisputed that after deducting the expenses incurred by the Bank from the sale proceeds of the agricultural produce of the said lands, the respondent was remunerated by paying 1/3rd of such net profit. Thus, the respondent cannot be said to have been remunerated in crop share.

In above view of the matter, I am of the opinion that the respondent has failed to establish that he was a tenant with respect to the said lands. The Bank has successfully established that it was cultivating the lands personally through hired labour. Further the tribunal and the authority below have resorted to erroneous approach to the matter at issue. Neither the Tribunal nor the authority below has given a finding that

the respondent was a tenant with respect to the said lands. Instead, the tribunal and the authority below have held that the respondent was not a servant of the Bank and he, therefore, is a deemed tenant as envisaged under section 4 of the Act. The question was whether the respondent can be said to be a deemed tenant within the meaning of section 4 of the Act and not whether he was a servant of the Bank or what was his relationship with the Bank. The respondent may or may not be the servant of the bank. He may be said to be manager or a supervisor employed by the Bank to supervise the agricultural operations on the said lands. Be that as it may, the respondent has failed to prove that he was cultivating the said lands as a tenant or that he was cultivating the said lands at all. In the cases in the above referred three judgments, the facts undisputed were that the tenant concerned was cultivating the land in question personally and that he was being paid in crop share. The facts in the said matters are quite distinguishable and the said judgments shall lend no support to the respondent herein.

In above view of the matter, petition is allowed. The judgment and order dated 14th August, 1989 passed by the Gujarat Revenue Tribunal in Revision Application No. 305 of 1984 is quashed and set aside. The order dated 29th October, 1979 passed by the Mamlatdar and A.L.T., Choryasi Prant is restored. Rule is made absolute. There shall be no order as to costs.

14.02.2002. [Ms. R.M.Doshit,J.]

#Vyas#